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U.S. District Court
Eastern District of MO

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

ROBERT M. SILLS,

Plaintiff,

v.

NICK ZOTOS,

Defendant.

Case No. 4:17-CV-00966-CDP

PLAINTIF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

The defendant asserts that the complaint fails to state a claim upon which relief can be granted because it is barred by Missouri's five year statute of limitations. (Def.'s Memorandum of Law at p. 6-9). Not so.

As a matter of law, the plaintiff could not bring this action until he first succeeded in over-turning his criminal judgment. See Heck v. Humphrey, 512 U.S. 477 (1994). Therefore, Missouri's five year statute of limitations began to run on March 18, 2013, the date the plaintiff succeeded in over-turning his conviction. See Cox v. Slay, 2013 U.S. Dist. LEXIS 159517 (E.D. MO., Nov. 7, 2013) (finding that Heck rule doomed the defendant's motion to dismiss because statute of limitations for convict did not begin to run until conviction was over-turned). Accordingly, the defendant's motion to dismiss is mertless.

CONCLUSION

The defendant's motion to dismiss must be denied on the authority of Cox v. Slay, supra.

Respectfully submitted,

Robert M. Sills

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Dated: May 26, 2017

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2017, the foregoing was served by mail on counsel for the defendant, Frank K. Carlson, 17 South Oak St., Union, MO 63084, by inserting same in a postage prepaid envelope and depositing same in a U.S. mail box.

Robert M. Sills

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